

1     Rule 2.4. Lawyer Serving as Third-Party Neutral.

2     (a) A lawyer serves as a third-party neutral when the lawyer assists two or more  
3 persons who are not clients of the lawyer to reach a resolution of a dispute or other  
4 matter that has arisen between them. Service as a third-party neutral may include  
5 service as an arbitrator, a mediator or in such other capacity as will enable the lawyer to  
6 assist the parties to resolve the matter.

7     (b) A lawyer serving as a third-party neutral shall inform unrepresented parties that  
8 the lawyer is not representing them. When the lawyer knows or reasonably should know  
9 that a party does not understand the lawyer's role in the matter, the lawyer shall explain  
10 the difference between the lawyer's role as a third-party neutral and a lawyer's role as  
11 one who represents a client.

12     Comment

13     [1] Alternative dispute resolution has become a substantial part of the civil justice  
14 system. Aside from representing clients in dispute-resolution processes, lawyers often  
15 serve as third-party neutrals. A third-party neutral is a person, such as a mediator,  
16 arbitrator, conciliator or evaluator, who assists the parties, represented or  
17 unrepresented, in the resolution of a dispute or in the arrangement of a transaction.  
18 Whether a third-party neutral serves primarily as a facilitator, evaluator or  
19 decisionmaker depends on the particular process that is either selected by the parties or  
20 mandated by a court.

21     [2] The role of a third-party neutral is not unique to lawyers, although, in some court-  
22 connected contexts, only lawyers are allowed to serve in this role or to handle certain  
23 types of cases. In performing this role, the lawyer may be subject to court rules or other  
24 law that apply either to third-party neutrals generally or to lawyers serving as third-party  
25 neutrals. Lawyer-neutrals may also be subject to various codes of ethics, such as the  
26 Code of Ethics for Arbitration in Commercial Disputes prepared by a joint committee of  
27 the American Bar Association and the American Arbitration Association or the Model  
28 Standards of Conduct for Mediators jointly prepared by the American Bar Association,  
29 the American Arbitration Association and the Society of Professionals in Dispute  
30 Resolution.

31 [3] Unlike nonlawyers who serve as third-party neutrals, lawyers serving in this role  
32 may experience unique problems as a result of differences between the role of a third-  
33 party neutral and a lawyer's service as a client representative. The potential for  
34 confusion is significant when the parties are unrepresented in the process. Thus,  
35 paragraph (b) requires a lawyer-neutral to inform unrepresented parties that the lawyer  
36 is not representing them. For some parties, particularly parties who frequently use  
37 dispute-resolution processes, this information will be sufficient. For others, particularly  
38 those who are using the process for the first time, more information will be required.  
39 Where appropriate, the lawyer should inform unrepresented parties of the important  
40 differences between the lawyer's role as third-party neutral and a lawyer's role as a  
41 client representative, including the inapplicability of the attorney-client evidentiary  
42 privilege. The extent of disclosure required under this paragraph will depend on the  
43 particular parties involved and the subject matter of the proceeding, as well as the  
44 particular features of the dispute-resolution process selected.

45 [4] A lawyer who serves as a third-party neutral subsequently may be asked to serve  
46 as a lawyer representing a client in the same matter. The conflicts of interest that arise  
47 for both the individual lawyer and the lawyer's law firm are addressed in Rule 1.12.

48 [5] Lawyers who represent clients in alternative dispute-resolution processes are  
49 governed by the Rules of Professional Conduct. When the dispute-resolution process  
50 takes place before a tribunal, as in binding arbitration (see Rule 1.0(m)), the lawyer's  
51 duty of candor is governed by Rule 3.3. Otherwise, the lawyer's duty of candor toward  
52 both the third-party neutral and other parties is governed by Rule 4.1.

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